

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1116 OF 2005

Shantilal Sagarmal Jain. ... Petitioner
Versus.
Champalal Kapoorchand Jain & others. ... Respondents.

Shri P.R.Arjunwadkar for the Petitioner.

Shri A.P.Mundarvi with Shri Girish Kulkarni for the
Respondents Nos.1 to 6.

Shri K.V.Saste, A.P.P for State.

CORAM : ABHAY S. OKA, J.

DATED : 29th June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The challenge in this Petition filed by the original Complainant is to the Judgment and Order dated 10th March 2005 passed by the learned Sessions Judge, Thane, by which the learned Judge granted anticipatory bail in favour of the Respondents Nos.1 to 6 (Accused).

2. The learned Counsel for the Petitioner submitted that while considering the merits of the case made out by the prosecution the learned Judge has recorded a categorical finding on merits taking a view that the charge under section 306 of the Indian Penal Code is not established. He submitted that the order granting

anticipatory bail is erroneous as a prima facie case of commission of offence under section 306 IPC was made out. He submitted that considering the serious allegations made by the prosecution, custodial interrogation was necessary. Lastly, he submitted that the learned Judge had committed an error by granting anticipatory bail for an indefinite period and the same is contrary to the law laid down by the Apex Court.

3. The learned Counsel for the Respondents Nos.1 to 6 has supported the impugned Judgment and order. The learned Counsel for the Respondents Nos.1 to 6 fairly stated that as held by the Apex Court the order granting anticipatory bail will enure to the benefit of the accused till the charge sheet is filed with liberty to the Accused to apply for regular bail before the appropriate Court. He submitted that there are no findings recorded by the learned Sessions Judge as contended by the learned Counsel appearing for the Petitioner.

4. There cannot be any dispute that while considering the application for grant of anticipatory bail the learned Sessions Judge could not have ventured to go into the merits of the case and to hold prematurely that there was no material on record to establish a charge of abatement to suicide under section 306 of the IPC. However, it cannot be disputed that the learned Judge

was required to consider the material placed before him with a view to consider the only relevant factors, namely the gravity of allegations and need for custodial interrogation. Going by the prosecution case admittedly the daughter of the Complainant was engaged and marriage could not take place and was cancelled for various reasons. The allegation of the prosecution is that scandalous allegations were made by the accused against the deceased daughter of the Petitioner regarding her bad character. As a result of the said allegations the daughter of the Petitioner suffered shock and that is the main reason for suicide committed by the daughter of the Petitioner.

5. According to the prosecution case, on 9th February 2005 the deceased left the house of her parents. At that time the case of the prosecution is that the Petitioner called the Respondent No.1 on telephone when the Respondent No.1 informed him that the deceased had reached his place very safely. The allegation of the prosecution is that on that day the Accused persons abused the deceased and assaulted her. The incident of suicide took place on 26th February 2005. The deceased was very much staying with her parents from 9th February 2005 till 26th February 2005 and it is not the case of the prosecution that between the said two dates there was any communication or interaction between the accused and the deceased.

6. It is obvious that in the context of the prosecution case which was made out, the learned Judge has come to the conclusion that the accused were entitled to anticipatory bail. It is obvious that the observations which are made by the learned Sessions Judge cannot be construed as expression of any opinion or any finding on merits of the prosecution case which is bound to be considered at the stage of trial.

7. No case has been made out before me that the Respondents have not complied with the conditions imposed for grant of anticipatory bail or that they have misused the facility granted to them.

8. In view of this position no case is made out for setting aside the order granting anticipatory bail. However, the order will have to be modified by directing that the order will enure to the benefit of the Respondents till the charge sheet is filed.

9. Hence the following order is passed:

(i) The impugned Judgment and Order dated 10th March 2005 passed by the learned Sessions Judge is confirmed subject to modification that the said order will enure to the benefit of the Respondents Nos.1 to 6 till

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charge sheet is filed. It is made clear
that after charge sheet is filed, the
Respondents Nos.1 to 6 will be at liberty
to make application for bail before the
appropriate Court.

- (ii) The parties to act on an authenticated
copy of this order.

Judge.